

REMARKS

Claims 1-84 are pending in the present application. The Office Action dated 11/02/2006 (the “OA”) rejected Claims 1-84. Without limiting the scope of the invention, and subject to a right to file a continuing application, Claims 1 and 44 are amended. No new subject matter has been added.

The 35 U.S.C. § 103 rejection of Claims 1-82 over Allan, Bass & Hornbuckle:

Claims 1-84 were rejected under 35 U.S.C. §103(a) as being unpatentable over Allen et al. (U.S. Patent No. 6,526,456, hereinafter referred to as Allan) and Bass et al. (U.S. Patent No. 6,744,446, hereinafter referred to as Bass) in view of Hornbuckle (U.S. Patent No. 5,613,089, hereinafter referred to as Hornbuckle). Applicants submit that the arguments presented in prior responses with regard to Allan, Bass, and Hornbuckle are still accurate, and Applicants hereby incorporate those arguments by reference. Nevertheless, without conceding a limitation to the scope of the invention, and reserving a right to file a continuing application, independent Claims 1 and 44 are amended to explicitly state clear meanings of the terms of the claims.

Specifically, independent Claims 1 and 44 are amended to specify that the collection of virtual containers identify a rental package of a predefined quantity of virtual containers each of which is configured to identify the one or more software products. Support is found throughout the specification, including page 3, lines 24-26, page 5, lines 16-20, page 13, lines 5-10, and Figure 9. Other independent claims already indicate a quantity, in the form of “one or more” virtual containers.

In response to Applicants’ prior response, the OA reiterates that “Allan and Bass fail to explicitly disclose the claimed limitation wherein [] the collection identifying a rental package of a predefined number of the one or more software products.” OA, pg. 4, lines 13-15. Instead, the OA again relies on Hornbuckle. The OA states that Hornbuckle’s 8-character package identifier code is

interpreted as a predefined number. Applicants respectfully note that this interpretation is incorrect. The non-amended claim language specified a predefined number of the one or more software products. The term “number” clearly corresponds to a quantity, not to an identifier code. Nevertheless, Applicants have amended independent Claims 1 and 44 to explicitly state a rental package of a predefined quantity.

The OA also states that Hornbuckle’s package key is readable as a rental package identifier. Applicants respectfully note that the claims do not specify a rental package identifier. The non-amended claims specify a collection identifying a rental package of a predefined number of the one or more software products. The term “identifying” does not specify a label, such as an identifier. Nevertheless, Applicants have amended independent Claim 1 to explicitly state the collection identifying a predefined quantity of virtual containers each of which is configured to identify the one or more software products.

Applicants also reiterate that Hornbuckle can not be combined with Allan and Bass, because the fundamental principal of operation of at least one reference would have to be changed to combine them. This position is explained in detail in Applicants prior response filed August 23, 2006, the contents of which are incorporated into this response by reference. The current OA counters that “motivation for combining the teachings of the various references need not [] be explicitly found in the reference themselves [and] the Examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness.” OA, pg. 6, lines 6-9. However, the OA’s explanation ignores the fact that combining Hornbuckle with Allan and Bass would require modifying at least one reference in such a way as to change its fundamental principle of operation. The OA indicates that a motivation is to prevent unauthorized use, copying, vandalism and modification of downloadable data and programs during or after transmission to the target computer. Even if these outcomes are desirable, “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP 2143.01 VI, citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Accordingly, Applicants respectfully request that the rejection of independent Claims 1, 33, 36, 37, 44, 76, 79, and 82-84 under 35 U.S.C. §103(a) be withdrawn. Dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims depend. Thus, dependent Claims 2-32, 34, 35, 38-43, 45-75, 78, 80, and 81 are patentable for at least the same reasons as their corresponding independent claims. Accordingly, Applicants respectfully request that the rejection of dependent Claims 2-32, 34, 35, 38-43, 45-75, 78, 80, and 81 under 35 U.S.C. §103(a) also be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants believe that this response has responded fully to the concerns expressed in the OA and that each of the pending claims is in condition for immediate allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

Dated: February 2, 2007

Respectfully submitted,

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